



STATE OF NEW JERSEY

*Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.bpu.state.nj.us*

TELECOMMUNICATIONS

IN THE MATTER OF THE FILING BY VERIZON)	ORDER OF APPROVAL
NEW JERSEY INC. FOR APPROVAL OF THE)	
SALE OF SURPLUS LAND TO PLAINFIELD-)	
HADLEY, LLC)	DOCKET NO. TM02050281

(SERVICE LIST ATTACHED)

BY THE BOARD¹:

By Order dated August 22, 2002 in this matter, the Board approved the sale of property by Verizon New Jersey Inc. ("Petitioner" or "VNJ") to Plainfield-Hadley, LLC ("Buyer" or "Plainfield-Hadley") for consideration in the amount of \$3,000,000. That Order contained the following condition:

This Order shall be of no effect, null and void, if the sale is not completed within one year of the date here [sic] unless otherwise ordered by the Board.

On August 20, 2003, Petitioner filed a letter in lieu of a formal petition for an Order extending the date for completing the subject sale to the Buyer. VNJ noted therein that it was unable to complete the sale within the required time because the original Purchase Agreement ("Agreement") was contingent upon the Buyer securing certain land use development approval from the planning and zoning agencies of the Borough of South Plainfield ("Borough"). VNJ stated that, while the Agreement of the parties had contemplated that the approvals would be secured within the time specified in the Board's Order, it had been informed by Plainfield-Hadley that the Buyer would not be able to secure these approvals within that time period due to unanticipated requirements of the Borough regarding the design of improvements providing access to and egress from the proposed development of the property.

¹ Commissioner Frederick F. Butler did not participate in the deliberation or the vote on this matter.

Petitioner further stated that the Borough had recommended certain road and other related improvements over and across contiguous lands of VNJ that are to be retained by VNJ and from which the subject property to be sold is to be subdivided. To accommodate the proposed improvements the Petitioner and Buyer entered into an Amendatory Agreement on August 15, 2003, and made it a part of Petitioner's August 20, 2003 filing with the Board. This Amendatory Agreement extends the date of completing the sale and provides conditions for certain increases in the purchase price. The Amendatory Agreement further requires that the Petitioner and Buyer execute a Cross-Easement Agreement after the approval of the improvements by the Borough but before their construction. The Cross-Easement Agreement will provide, among other things, that: (1) the road improvements will be constructed and maintained at the sole expense of the Buyer, with the exception of that portion of the improvements that benefit VNJ, the costs of which are to be equally shared; (2) Plainfield-Hadley will provide and maintain insurance coverage for the improvements; and (3) the Buyer will indemnify and hold VNJ harmless for any and all loss, damages, liabilities, causes of action and all costs and expenses pertaining to the improvements.

Although the Amendatory Agreement and Cross-Easement Agreement are expressly subject to the procurement by Petitioner of the appropriate approvals of the Board, VNJ noted that the precise location of the improvements and the specific cross-easements cannot be definitely determined at this time as they are subject to application to and approval by the Borough. Accordingly, VNJ indicated that after the precise location of the improvements and cross-easements are determined, it will file an appropriate supplemental petition with the Board for approval of the granting of the Borough-approved cross-easements or a notice pursuant to N.J.A.C. 14:1-5.6(d) 4, if applicable, for certification that the granting of such easements by VNJ to Plainfield-Hadley is deemed to be in the ordinary course of business.

For the reasons set forth in its letter of August 20, 2003, Petitioner requested that the Board extend the time for completing the sale for one year until August 21, 2004.

In support of its request, the Petitioner also filed a copy of a letter dated June 20, 2003, prepared by Welsh Chester Galiney Matone Inc., the independent real estate appraiser retained by VNJ to appraise the property, advising that the fair market value of the property as of June 18, 2003, the reinspection date, continues to be \$3,150,000, the same value set forth in its prior appraisal attached to the original petition.

RATEPAYER ADVOCATE'S COMMENTS

In comments filed on September 5, 2003, the Division of the Ratepayer Advocate ("RPA") argued that VNJ's filing to extend the sale completion date should be considered a new filing because, by the terms of the Board's Order of August 22, 2002, the approval of the relief requested in the original petition became null and void when the sale was not completed by August 21, 2003. The RPA recommended that the Board order VNJ to return the financial rewards of the sale to ratepayers by augmenting VNJ's Access New Jersey program with the profit from the sale.

VNJ'S RESPONSE

On September 30, 2003, VNJ filed its response to the RPA comments arguing that VNJ's filing to extend the sale should not be considered a new filing because no intervening change in law has occurred since the Board's statement on the issue, and the "moot[ness]" of the ruling alleged by the RPA is both legally incorrect (since the matter is still pending before the Board on VNJ's application to extend the time for closing) and factually erroneous (since, at most, the decision would be rendered dicta and not moot by the passage of time). Furthermore, VNJ argued that the Board recently rejected the RPA's position in I/M/O the Application of Verizon New Jersey Inc. for the Sale and Conveyance of Real Property Located in the Township of Union to Union Center National Bank, BPU Docket No. TM03060469.

BOARD DISCUSSION

The Board notes that the RPA is correct in stating that the sale of property by VNJ was not completed within the one-year time frame set by the Board. The Board requires that in instances such as these VNJ file its request for an extension at least 60 days in advance to allow sufficient time for review and to process the matter. However, since this request involves an extension of the sale of property previously approved by the Board, we will not require VNJ to file a new petition, nor will we treat this matter as a new petition.

The Board finds that it is necessary to allow the parties an opportunity to address the issue of whether the proceeds of the sale of the subject property should be shared with ratepayers since this matter has not been specifically addressed in the Board's Decision and Order in In the Matter of the Application of Verizon New Jersey Inc. for Approval (i) of a New Plan for an Alternative Form of Regulation and (ii) to Reclassify Multi-line Rate Regulated Business Services as Competitive Services, and Compliance Filing, Docket No. TO01020095. Accordingly, the Board DIRECTS Staff to develop a process for such an examination. However, the Board also FINDS that this process should not delay Petitioner's request for an extension of time, and therefore, after review, the Board HEREBY FINDS that the extension of time for the completion of the sale of the subject property as proposed by the Petitioner is reasonable.

Accordingly, the Board HEREBY APPROVES, nunc pro tunc as of August 21, 2003, VNJ's request to extend the time for completing the sale for a period of one year until August 21, 2004, subject to the following conditions:

- ? Petitioner is directed to file a Supplemental Petition with the Board for approval or appropriate notice, pursuant to N.J.A.C. 14:1-5.6(d)4 after the precise location of all road improvements is determined;

- ? This Order shall be of no effect, null and void, if the sale hereby approved is not completed by August 21, 2004, unless otherwise ordered by the Board;
- ? Petitioner shall ensure that the proceeds from this transaction will be made available with interest at a rate to be determined by the Board in the event the Board ultimately determines that sharing of the proceeds with ratepayers is appropriate; and
- ? All other findings, conclusions and conditions as set forth in the Board's prior Order, dated August 21, 2002, shall remain valid and in full effect.

DATED: **5/19/04**

BOARD OF PUBLIC UTILITIES
BY:

SIGNED

JEANNE M. FOX
PRESIDENT

SIGNED

CAROL J. MURPHY
COMMISSIONER

SIGNED

CONNIE O. HUGHES
COMMISSIONER

SIGNED

JACK ALTER
COMMISSIONER

ATTEST:

SIGNED

KRISTI IZZO
SECRETARY

I/M/O the Filing by Verizon New Jersey Inc. for Approval of the Sale of
Surplus Land to Plainfield-Hadley, LLC
BPU Docket No. TM02050281

SERVICE LIST

Sidney D. Weiss, Esq.
19 Saddle River Road
Cedar Knolls, New Jersey 07927

Anthony Centrella
John Deluca
Robert Melendez
Majid Hasan
Division of Telecommunications
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

Seema M. Singh, Esq.
Jose Rivera-Benitez, Esq.
Division of the Ratepayer Advocate
31 Clinton Street
P.O. Box 46005
Newark, New Jersey 07102

Bhaveeta Kapoor, D.A.G.
Department of Law & Public Safety
124 Halsey Street, 5th Floor
Newark, NJ 07102